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 FSB and Wachovia Mortgage Corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

DOLORES MANDRIGUES, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

WORLD SAVINGS, INC., WORLD SAVINGS
 BANK, FSB, WACHOVIA MORTGAGE
 CORPORATION, and DOES 1 through 10,
 inclusive,

Defendants.

Case No. C07 04497

**DEFENDANTS WORLD SAVINGS BANK
 FSB'S AND WACHOVIA MORTGAGE
 CORPORATION'S SUPPLEMENTAL
 MEMORANDUM OF POINTS AND
 AUTHORITIES, BASED ON NEWLY
 ISSUED AUTHORITY, IN SUPPORT OF
 PENDING MOTION TO DISMISS
 PLAINTIFFS' CORRECTED SECOND
 AMENDED COMPLAINT**

Date: February 29, 2008

Time: 9:00 a.m.

Place: Courtroom 3, 5th Floor

Compl. Filed: August 30, 2007

The Honorable Jeremy Fogel

Defendant World Savings Bank, FSB ("World") respectfully submits the attached recently published decision as supplemental authority in support of Defendants' Motion to Dismiss. In Silvas v. E*Trade Mortg. Corp., 2008 U.S. App. LEXIS 1944 (9th Cir. January 30, 2008), attached hereto as Exhibit 1, the Ninth Circuit affirmed and clarified the District Court's holding in Silvas v. E*Trade Mortgage Corporation, 421 F. Supp. 2d 1315, 1317 (S.D. Cal. 2006), which is

1 cited in Defendants' moving papers for the proposition that dismissal of claims for relief under
 2 California Business and Professions Code § 17500 & 17200 ("UCL"), is appropriate when those state
 3 laws, *as applied*, are used in an attempt to regulate the bank's disclosures and advertisements
 4 because the Home Owners' Loan Act of 1933, 48 Stat. 129, as amended, 12 U.S.C. Section 1461, *et*
 5 *seq.* ("HOLA") preempts any such application of the UCL.

6 In Silvas, like the present case, plaintiffs alleged defendants' "practice of
 7 misrepresenting consumers' legal rights in advertisement and other documents [was] contrary to the
 8 policy of California and thus violate[d] UCL § 17200." Silvas, 2008 U.S. App. LEXIS 1944 at *11.
 9 After noting that no presumption against preemption exists in the HOLA context and that the Office
 10 of Thrift Supervision Regulation occupies the entire field of lending regulation for federal savings
 11 associations, the Court found that HOLA preempted the UCL as plaintiffs sought to apply it. Id. at
 12 *11-12. Specifically, **the Court held that plaintiffs' Section 17200 claim "fits within §**
 13 **560.2(b)(9) because the alleged misrepresentation is contained in advertising and disclosure**
 14 **documents."** Id. at *11 (emph. added). "Therefore, the preemption analysis ends." Id.

15 Like the plaintiffs in the present case, plaintiffs in Silvas sought to salvage their
 16 preempted claims by arguing that HOLA did not preempt the UCL as applied because plaintiffs
 17 intended to fit their claims under 12 C.F.R. § 560.2(c)(1) and (4)'s exceptions to preemption. In
 18 particular, plaintiffs alleged that their state law claims were grounded in generally applicable
 19 California contract, commercial and tort law. Id. at *12. The court rejected this argument, stating
 20 that "Appellants' claims are based on types of law listed in paragraph (b) of § 560.2, specifically
 21 (b)(9) and (b)(5)." Id. at *12. Thus, the court again stated, no further analysis was necessary; the
 22 UCL was preempted.¹ In short, the Ninth Circuit determined that preemption analysis initially
 23 focuses not on whether a state law on its face regulates the lending activities outlined in § 560.2(b),
 24 but whether it regulates lending activities *as applied*.

25
 26 ¹ The Court went on to note, "If we did reach the issue [of whether plaintiffs' claims more than incidentally affect
 27 lending operations under § 560.2(c)'s analysis], we would reach the same result. When federal law preempts a field, it
 28 leaves 'no room for the States to supplement it.'" Id. at *12, fn 3, citing Rice v. Santa Fe Elevator Corp., 331 U.S. 218,
 230 (1947).

1 In the instant case, Plaintiffs seek to use state statutory and common law claims to
2 state a private right of action for Defendant's allegedly deficient loan disclosures and
3 advertisements. Silvas now definitively holds that, in the Ninth Circuit, HOLA preempts all such
4 state law claims as to a federally chartered bank.

5
6 DATED: February 4, 2008

7 REED SMITH LLP

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9 By /s/ Keith D. Yandell
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11 Attorneys for Defendants World Saving Bank, FSB
12 and Wachovia Mortgage Corporation
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